

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 62477-6-I
Respondent,)	
)	
v.)	DIVISION ONE
)	
ROY FRANCIS WINKLE, SR.,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: June 15, 2009

PER CURIAM. Roy Winkle appeals the order amending his sentence on his conviction of two counts of third degree rape of a child and supplying liquor to a minor. The statutory maximum for his third degree rape of a child convictions (counts I and II) is 60 months. His initial sentence included 60 months of confinement and 36 to 48 months of community custody. In his first appeal, the State conceded and this court ruled that “the total term of confinement plus community custody may not exceed the maximum term for the offense.” On remand, consistent with the approach endorsed in State v. Sloan, 121 Wn. App. 220, 223-24, 87 P.3d 1214 (2004), the trial court entered an order clarifying the judgment and sentence stating “[t]otal amount of jail time and community custody/supervision time combined and imposed shall not exceed statutory maximum of 60 months on cts 1 &2.”

In this second appeal, Winkle argues and the State concedes that the combination of 60 months confinement and 36 to 48 months of community custody exceeds the 60-month maximum sentence for his offense. We recently held in State v. Linerud, 147 Wn. App. 944, 197 P.3d 1224 (2008) that when the combination of

confinement and community custody exceeds the maximum sentence, the sentence is indeterminate and must be remanded for imposition of a determinate sentence not exceeding the statutory maximum. Contrary to the approach endorsed in Sloan, this is true even if the judgment and sentence recites that the total sentence shall not exceed the statutory maximum. Linerud, 147 Wn. App. at 949-51. Accordingly, we remand for resentencing and for the court to exercise its discretion regarding the terms of confinement and community custody. Linerud, 147 Wn. App. at 951. We note that “[i]f the trial court wants to impose the maximum terms of confinement and community custody, it may do so under the second option in RCW 9.94A.715(1), which permits it to impose a term of community custody equal to the earned early release time.” Order Den. Mot. for Recons. And Amending Op. at 1, Linerud, No. 60769-3-I (Wash. Ct. App. Mar. 20, 2009), amendment to be published at Linerud, 147 Wn. App. at 950 n.17.

Remanded for resentencing.

For the court:

Ajda, J.
Cox, J.
Leach, J.